UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of	)	
	)	Case 05-RC-108090
HCR MANORCARE, RUXTON	)	
	)	
Employer	)	
	)	
and	)	
	)	
1199 SEIU UNITED HEALTH CARE WORKERS EAST	)	
	)	
Petitioner	)	
	)	

PETITIONER'S BRIEF IN SUPPORT OF EXCEPTIONS TO HEARING OFFICER'S REPORT AND RECOMMENDATION ON OBJECTIONS

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PRELIMINARY STATEMENT - EXCEPTIONS

On January 23, 2014, Hearing Officer Brendan Keough issued a report and recommendation on objections to an election held on August 7, 2013. The Hearing Officer found, as a matter of fact, that Manor Care-Ruxton, d/b/a Manor Care Health Services-Ruxton ("Manor Care-Ruxton") decided to and did grant a wage increase, referred to by the Employer and the Hearing Officer as a "MAWA" (Market Analysis Wage Adjustment), after it became aware that its Geriatric Nursing Assistants were organizing. The Hearing Officer noted that "if required to" he would find that the Employer failed to show that its decision to grant such wage increase had a legitimate business purpose unrelated to the organizing campaign. Hearing Officer's Report and Recommendation on Objections ("HO Report") at 9, 14. He also found that the Employer paid the illegitimate wage increase during the critical period. Nonetheless, the Hearing Officer found that the announcement of the wage increase (Objection 2) was not objectionable because it was made to some eligible voters one day before the representation petition was filed. HO Report at 11. He also found that payment of the illegitimate wage increase (Objection 3) was not objectionable because the "effective" date of the increase was made retroactive to one week before the filing of the petition. HO Report at 11-14.

United Health Care Workers East ("1199 SEIU" or "the Union") excepts to the Hearing Officer's overruling of Objections 2 and 3. 1199 SEIU further excepts to the Hearing Officer's disregard of the following relevant and undisputed facts in reaching his decision to overrule Objections 2 and 3: 1) the election was close—out of 65 eligible voters, 28 votes were cast for the Union, 33 votes were cast against the Union; 2) the pre-petition announcement of a wage increase was made to an estimated 25 out of 65 eligible voters one day before the petition was filed (*ergo* the announcement was made to the remaining eligible votes post-petition, *during* the

critical period);[1] 3) the announcement concerned the effective date of (and no other details concerning) a forthcoming "market" wage increase; 4) eligible voters were informed of the amount of their wage increase or bonus *during* the critical period; 5) 30% of eligible voters (19 out of 65) received a wage increase of $1.00 or more per hour; 6) payment of the increase *during* the critical period included retroactive pay; 7) 12 eligible voters received a lump sum bonus instead of a wage increase; 8) the lump sum bonus was "effective" *during* the critical period; 9) one week before the election, the Employer showed a Powerpoint presentation to all eligible voters in which it compared employees' new wage rates with the bargained wage rates at1199 SEIU facilities, which facilities received no market adjustment.

In reaching his conclusions, the Hearing Officer acknowledged the Board's holding in *Kingspan Insulated Panels, Inc.,* 359 NLRB No. 19, slip op. at 1 fn.2 (2012), setting aside an election based on the closeness of the election and the cumulative effects of 1) a wage increase offered to a lead activist (where the employer conveyed the increase but not the amount an hour after it received the union's demand for recognition), 2) the implementation of a shift differential (where the employer announced the differential one week before the representation petition and implemented it post-petition), and 3) the interrogation of one employee. He did not apply *Kingspan,* however. HO Report at 13. He applied *Kokomo Tube Company,* 280 NLRB 357 (1986), a case in which the Board strictly construed *Ideal Electric & Manufacturing Co.*, 134 NLRB 1275 (1961), and held that the payment of an unlawful wage increase during the critical period was not grounds for setting aside an election where both the announcement and effective date of the increase fell before the critical period. HO Report at 12.

[1] 1199 SEIU excepts to the Hearing Officer's conclusion that "The Union presented no evidence that employees were informed about the MAWA after June 25." HO Report at 10.

The Hearing Officer reasoned that the Board has never overruled *Kokomo.* Further, according to the Hearing Officer, the absence of an unfair labor practice allegation "was lethal to the union's argument" for the application of *Kingspan*. HO Report at 14. According to the Hearing Officer, the Board only set the election aside in *Kingspan* because the employer's interference with employees' freedom of choice violated § 8(a)(1). Since no violation of law was alleged in this proceeding, the Hearing Officer reasoned, he had no authority to make such finding and there was "no meaning shed on the post-petition payment or 'implementation'" of the wage increase. *Id*.

1199 SEIU excepts to the Hearing Officer's failure to apply *Kingspan* and *Wis-Pak Foods Inc.*, 319 NLRB 933, fn. 2 (1995), both of which implicitly rejected *Kokomo* and applied the reasoned principle that pre-petition conduct may be considered "if it adds meaning and dimension to related post-petition conduct." *Kingspan*, slip op. at 6 (ALJ Decision.) The answer to the question – whether alleged conduct had the tendency to interfere with employees' freedom of choice – is the same whether or not an unfair labor practice charge concerning the alleged misconduct has been made or adjudicated.

1199 SEIU excepts to the Hearing Officer's finding that the Employer demonstrated a past practice of "using a Request for MAWA as a compensation tool" and his reliance on that finding as further justification for applying *Kokomo*. HO Report at 12. Although the Union agrees that the Employer has provisions for MAWAs in their policies, procedures, and handbooks, the record lacks any documentation or testimony establishing a past practice of analyzing or adjusting wage rates at the Ruxton facility. Indeed, the record fails to establish an Employer past practice of making market adjustments at any HCR Manor Care facility, except to the extent necessary to defeat an active union organizing campaign. *See, e.g., Manor Care*

Health Servs.-Easton, 356 NLRB No. 39, slip op. at 21 (2010). 1199 SEIU excepts to the Hearing Officer's failure to take judicial notice of the Board's findings and conclusions in *Manor Care Health Services-Easton*., and his failure to infer Employer knowledge of the Union's citywide publicity campaign in October 2012, where past practices, policies and procedures of the Employer establish its commitment to identifying and responding to union activity in relevant labor markets—"the CEC program." HO Report at 6.

1199 SEIU excepts to the Hearing Officer's conclusion that the Employer did not engage in objectionable conduct when it threatened eligible voters that their new wage rates would be at risk if they voted for the Union, and when it implied that the Union would be unable to negotiate better wage rates. (Objections 4 and 5). HO Report at 17. Such conclusion rested on the Hearing Officer's erroneous conclusion that the Employer's announcement and implementation of wage increases and bonuses was not objectionable. *Id.*

FACTS

A. The Employer.

HCR Manor Care manages and operates various acute and long-term care facilities throughout the United States. Tr. 13-14, 188. Manor Care-Ruxton is one of approximately nine facilities managed by HCR Manor Care in the Baltimore area, which also include Roland Park, Dulaney, Rossville, Woodbridge, Towson, Silver Springs, Adelphi, and Hyattsville. Tr. 13-14. Of those facilities, employees at Dulaney, Adelphi, and Hyattsville are represented by 1199 SEIU. U. Exh. 5. Because the record evidence establishes that HCR Manor Care operates under the name Manor Care Health Services and that it dictates wages and other terms and conditions

of employment at Manor Care-Ruxton, HCR Manor Care, MCHS and Manor Care-Ruxton shall be referred to herein collectively as "the Employer."

B. The Employer's History With Respect to Union Organizing.

In 2007, HCR Manor Care learned that nursing assistants at one of its facilities, in Easton Pennsylvania, were preparing to request an election. *Manor Care Health Servs.-Easton*, 356 NLRB slip op. at 21. It responded by unlawfully soliciting grievances and by awarding "market" wage rate increases (from $10.25 to $11.00 per hour) and bonuses, among other things. The employer defended its conduct by offering evidence of a corporate-wide policy referred to as Continuous Employee Communications ("CEC"), which policy had been introduced at all HCR Manor Care facilities as part of its commitment to positive employee communications. *Id.* at 8. The CEC policy requires managers to conduct small group meetings and action plans with the goal of avoiding third-party representation. *Id.* at 8. The Board found no evidence of such past practice at the Easton facility and ordered Manor Care-Easton to cease and desist. *Id.*

In September 2012, an employee relations consultant employed by HCR Manor Care responded to signs of organizing at a Hampton Bay, Michigan, facility by soliciting grievances and promising to look into employee concerns. *Heartland Health Care Ctr.-Hampton*, JD-45-13, at 3, 12-13 (Oliver ALJ, July 18, 2013). An Administrative Law Judge found such solicitation unlawful and rejected the employer's argument that it was entitled to engage in such conduct as part of a past practice under its "CEC program." *Id.* The ALJ found that the employer failed to establish a past practice which involved the participation of officials from the employer's "parent company" in the solicitation of grievances at the Hampton Bay facility. The ALJ ordered Heartland-Hampton of Bay City to cease and desist. *Id.*

At the hearing in this case, Jermaine Hancock, the Director of Human Resources at Manor Care-Ruxton was asked if he was familiar with the CEC policy offered in evidence in *Manor Care-Easton*. U. Exh. 14. He testified that he was given the same manual when he was hired by Manor Care-Ruxton. Tr. 180, 182.

The CEC Manual sets forth HCR Manor Care's expectations with respect to managers' responses to signs of labor activity:

> INTRODUCTION AND EXPECTATIONS
>
> HCR Manor Care is committed to creating and maintaining work environments that foster good teamwork, open communication and trust throughout the location. Such environments will enhance productivity, improve retention, make third-party representation unnecessary and ultimately result in better quality services.
>
> * * *
>
> Other key components of our CEC and our commitment to positive employee relations are vulnerability assessments, the employee complaint procedure and the Care Line. Each of these components allows for additional channels of communication, potential detection of concerns that have been unresolved or identification of specific risks due to market or internal vulnerabilities.

U. Exh. 14 at 1.

> SMALL GROUP MEETINGS
>
> Small Group Meetings are a required component of our CEC. Leaders are expected to meet on each shift with all employees in small groups, preferably by department and always with supervisors separate from line staff. These meetings should be held at least every other month; however, more frequent meetings may be beneficial or required, depending upon the preference of the leader and/or the risk factors present at the location.
>
> * * *
>
> Regional Directors of Operations and Regional HR Managers should jointly conduct their own Small Group Meetings at each location one time a year. In locations where there are significant employee relations concerns or labor activity, two times a year may be more appropriate.

Id. at 3.

> VULNERABILITY ASSESSMENTS
>
> The Employee/Labor Relations Vulnerability Assessment tool is designed to provide a systematic approach to assess the overall employee relations climate, focusing on vulnerability to union organizing.
>
> The decision to use this tool will be done ad hoc, and at the discretion of the Employee Relations/HR Operations department, based upon certain risk factors or events in the location or in the local market.

Id. at 4.

> VULNERABILITY ASSESSMENT
>
> A vulnerability assessment will be conducted based upon certain factors in the location or local market such as:
>
> -Union activity at other businesses in the area or HCR Manor Care locations.
> -Local community action/religious groups rallying employees to unionize.
> -Other health care businesses signing neutrality agreements in the area.
> -Unusual number of third-party complaints.
> -Increase in employee Care Line complaints.
> -Reports of unrest (management turnover, poor employee relations, concerted activity, etc.)
> -When an Employee Survey is not appropriate (based on timing or the situation).

Id., attachment 5.

C. Managers Responsible for Manor-Care Ruxton.

HCR Manor Care employs a director for its Eastern Division who oversees human resources at over 60 facilities in the states of Pennsylvania and Maryland. Tr. 236-237. John Kolesar is the Area Human Resources Director for the Eastern Division. Under him, a Regional Director of Operations and a Regional Human Resource Manager oversee the Baltimore facilities. Tr. 243, 245. In 2012, Adeline Delaney was the Regional Human Resource Manager. Tr. 145. She was replaced by Karen Boxen in March or April, 2013. Tr. 145-46. The Regional Director of Operations was Kim Rocheleau. Tr. 78.

At Manor Care-Ruxton, the highest level manager is referred to as the "Administrator." Tr. 25; U. Exh. 3 (Table of Organization). Since May 10, 2012, the Administrator has been Eugene Amanahu. Various directors report directly to Amanahu, including the Director of Nursing, the Director of Human Resources, the Social Service Director and the Maintenance Director. Tr. 10-11. Jermaine Hancock is the Director of Human Resources. Tr. 24.

The Administrator of Manor Care-Ruxton has no authority over the wage scale paid to employees. Tr. 31. He can only make recommendations. Tr. 28. Administrator Amanahu testified that he recalled once recommending a market wage adjustment, and he testified that there are no documents reflecting such recommendation, which he made directly to the Area Human Resources Director, John Kolesar. Tr. 33-34, 36. The record reflects no wage increases or wage analyses performed based on such recommendation.

In addition to its 65 Geriatric Nursing Assistants, Manor Care-Ruxton employs approximately 50 RNs/LPNs, 5 or 6 Recreation/Activities Assistants, 3 or 4 Physical Therapy Assistants and 3 or 4 Receptionists. Tr. 57-59.

D. The Wage History at Manor Care-Ruxton.

As of October 24, 2012, the starting or base wage rate for Nursing Assistants at Manor Care-Ruxton was $10.25 per hour (the same as Manor Care-Easton in 2007.) U. Exh. 13, 17. The pay scale based on years of experience, as reflected in Union Exhibit 13, was capped at 5 years and $12.05 per hour:

0	$10.25
1	$10.65
2	$11.05
3	$11.45
4	$11.85
5	$12.05

U. Exh. 13 (October 24, 2012 Request for MAWA). According to John Kolesar, Area Director of Human Resources-Eastern Division, HCR Manor Care, the Employer pays its Nursing Assistants based on "merit," not seniority. Tr. 253-255.

In May 2013, when the organizing campaign in this case began, 66% of the Nursing Assistants had worked for the Employer more than 5 years, and *none* had ever received a "market" wage adjustment. U. Exh. 17. *See also* U. Exh. 13 ("Last Market adjustment: Unknown"); Tr. 70, 170.

E. October 2012: 1199 SEIU Launches Citywide Campaign and Manor Care Documents A Request for Market Analysis Wage Adjustment.

In the beginning of October 2012, 1199 SEIU launched a citywide campaign to raise standards for health care employees in Baltimore. Tr. 207-208. Organizer Brian Owens testified that the Union purchased advertising on billboards, in newspapers and at bus stops. Tr. 208. Owens testified that the ads began on October 22, 2012, and prior to that there were press releases. Tr. 208.

On October 24, 2012, the Director of Human Resources at Manor Care-Ruxton, Jermaine Hancock emailed a "Request for Market Analysis and Wage Adjustment" ("Request for MAWA") worksheet for Nursing Assistants, RNS and LPNs employed at Ruxton to his direct report Adeline Delaney, then-Regional Human Resource Manager for HCR Manor Care. Tr. 263; U. Exh. 13. Mr. Hancock testified that he prepared and emailed a similar worksheet in February 2012 to Ms. Delaney and Rob Fuhr, of HCR Manor Care Employee/Labor Relations. Tr. 146-47, 189. The October 2012 worksheet proposes a $0.75 increase to the starting wage of Nursing Assistants—from $10.25 *to $11.00*. U. Exh. 13. Mr. Hancock testified that he prepared the October 2012 Request for MAWA at the direction of Ms. Delaney (not the Administrator of

Ruxton). Tr. 167-168, 189. The October 24, 2012 Request for MAWA was an update to the February 2012 Request for MAWA, which was not introduced at the hearing. Tr.134-136.

When asked why he completed a Request for MAWA worksheet in October 2012, Mr. Hancock testified, "Because that's what I was instructed to do." Tr. 134. After he emailed the October Request for MAWA to Ms. Delaney, he did not update it again in 2013. Tr. 145. The record reflects one email dated October 24, 2012, from Mr. Hancock to Ms. Delaney, and no other correspondence concerning the October Request for MAWA. Ms. Delaney did not testify at the hearing, and John Kolesar, her director superior, denied knowledge of the February or October Requests for MAWA or the reasons why Mr. Hancock had been instructed to create them. Tr. 259. He also testified that a Request for MAWA does not result in a wage analysis being conducted every time. *Id*.

F. May 15, 2013: The Employer Announces Its Knowledge of Organizing Activity By Employees at Ruxton and Launches Its Anti-Union Campaign.

By a letter dated May 15, 2013, the Administrator of Manor Care-Ruxton stated, "Dear Manor-Care Ruxton Employees, It has come to my attention that Union organizers have approached some of our employees at their homes and are approaching employees at one of our sister facilities." U. Ex. 1 (Letter to Employees from Administrator E. Amanahu). The letter informs employees, "the Union may promise you more money, or better benefits or more staff. . . . However, . . . **[t]here is nothing you can do to make this Union keep the promises they have made.** . . . [Y]our Department Head and I will be giving you information during the next few weeks about this Union . . . ." U. Ex. 1 (emphasis in original). Mr. Amanahu testified that he could not recall how or when it came to his attention that Union organizers had approached Ruxton employees. Tr. 16-17. He testified that the sister facility referred to in his letter is Roland Park. Tr. 12-13. The letter was distributed to employees by hand. Tr. 15.

G. June 3, 2013: Tammie Houck Comes to Assist the Administrator.

Tammie Houck testified that she was assigned to work at Manor Care-Ruxton as an "Assistant Administrator" on June 3, 2013. Tr. 79. No such title exists in the Employer's table of organization. U. Exh. 3. The reason given for Ms. Houck's assignment to Ruxton was that Eugene Amanahu had a pre-scheduled vacation involving foreign travel. Mr. Amanahu's vacation was from June 10th to July 5th. Houck remained at the facility until August 9, 2013, after the election. Tr. 28, 79.

Ms. Houck testified that she and a select group of managers participated in the union campaign by, among other things, handing out literature giving negative information about unions. Tr. 80, 82-84. She testified also that when she was being prepared to take over the facility, she was told that employees were getting a market wage adjustment by Jim Burtnett. Tr. 112-114. Jim Burtnett's job title was described by Ms. Houck as "Employee Relations", by Mr. Hancock as "Labor Relations Director" (as distinguished from Human Resources Director), Tr. 130, and by Mr. Kolesar as "Employee Relations Consultant." Tr. 303.

Other managers assigned to conduct the Employer's anti-union campaign included the Director of Human Resources (Mr. Hancock), the Director of Nursing, and the Director of Social Work. Tr. 82-83. These managers also personally distributed leaflets/letters to employees. Tr. 61-62, 82.

Mr. Hancock testified that he met with and distributed leaflets to Nursing Assistants on the third floor. Tr. 185. Between May 15, 2013 and August 7, 2013, he distributed between six and ten leaflets to employees, all by hand. Tr. 185.

H. June 14, 2013: With No Pending Request for MAWA, John Kolesar Emails Wage Proposal for Ruxton to Corporate Compensation Department.

On June 14, 2013, Area Human Resource Director John Kolesar sent an email to Suse Learman, Compensation Manager at HCR Manor Care, with the subject line "Roland Park and Ruxton Market Adjustments," stating:

> Per our discussion please process these market adjustments for Nurse Aides at these facilities. I would appreciate it if you can do whatever you can to expedite these two wage proposals.

U. Exh. 15 (without attachment), Er. Exh. 2 (with attachment dated November 12, 2013). Note that the attachment contains no recommendation concerning the effective date of the proposed wage increase. Following that email, Kolesar sent an email to Regional Human Resource Manager Karen Boxen on June 17, 2013, stating, "This is what was submitted." *Id.* Mr. Kolesar testified that the attachment to that email was a "finalized" proposal generated after a meeting between himself, the Director of Operations and the Assistant Vice President. Tr. 294, 296. In other words, no involvement by anyone at the Ruxton or Roland Park facilities or by anyone with direct oversight over those facilities. Mr. Kolesar denied having any minutes of the meeting or any ability to determine the date of such meeting. Tr. 295.[2] He also denied having been asked to produce such documents in response to the Union's subpoena. Tr. 298. No other documentation or testimony were offered to establish the origin of the Employer's June 14, 2013 wage proposals.[3]

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[2] When asked if he could look up the date on his Blackberry, Kolesar testified he does not carry a Blackberry. Tr. 297-298. Emails from Kolesar offered in evidence by the Employer state "sent from my Blackberry." See Er. Exh. 4.

[3] It is noteworthy that the last recorded Request for MAWA, from Mr. Hancock to Ms. Delaney in October 2012, does not match the attachment proffered with Kolesar's email in significant respects: 1) the proposed base rate increase in the proffered spreadsheet is $0.25 higher than the October Request for MAWA ($11.25 instead of $11.00); 2) the proposed cap is also $0.26 higher ($13.06 instead of $12.80); and 3) the "current" rates are completed through 10 years, whereas in the October Request for MAWA they are left blank. *Compare* U. Exh. 13

Mr. Kolesar offered little explanation as to how he and the other corporate executives decided upon each individual's proposed wage increase, which have no direct correlation to years of experience and which varied from 1% to 14.5% (not including Abigail Archibong, who received a 19.279% increase and whose name is missing from Er. Exh. 2 and 5). *See* U. Exh. 17. Nor did he explain why wage proposals were made only for Nursing Assistants, and not for LPNs or RNs who had been included in the October 2012 Request for MAWA.

On June 18, 2013, Karen Boxen Regional Human Resource Manager emailed Human Resource Director Hancock a new or edited Request for MAWA with instructions for him to "Complete, correct and return to me." Mr. Hancock promptly complied on June 19, 2013. Er. Exh. 1.

I. June 19, 2013: The Employer Announces Its Knowledge That Employees Have Been Asked to Sign Union Cards.

By letter dated June 19, 2013, Tammie Houck stated to employees, "In recent weeks, Eugene, your supervisors and I have spoken with you about union organizing in our Center. Several of you have been asked to sign a union card, and even been visited at home by union organizers." U. Exh. 8. The letter goes on to discuss the limitations of a management rights clause and emphasizes that "even with union representation, management decisions would still rest with the managers and supervisors." It concludes, "When we have issues or problems, the best way for us to work through them is directly, without an outside third party." *Id*.

J. June 21, 2013: John Kolesar Requests Status of Ruxton Wage Proposal.

On June 21, 2013, John Kolesar sent an email to Suse Learman inquiring about the status of the Ruxton and Roland Park Wage Proposals. Er. Exh. 4.

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to Er. Exh. 2. Kolesar offered no explanation why the decision was made to increase the starting wage by $1.00, instead of $0.75 as proposed on October 24, 2012.

K. June 24, 2013: HCR Manor Care Approves Proposed Wage Increase for Nursing Assistants Only.

On June 24, 2013, Suse Learman emailed John Kolesar and others advising that wage increases for Nursing Assistants at Ruxton and Roland Park had been approved. The change was made retroactive to June 19, 2013. Er. Exh. 5. The new minimum pay scale based on years of experience is $11.25 for new hires and is capped at $14.06 for employees with 10 years' experience:

0	$11.25
1	$11.42
2	$11.59
3	$11.76
4	$11.94
5	$12.12
6	$12.30
7	$12.49
8	$12.67
9	$12.86
10	$13.06
PRN	$14.06

Er. Exh. 5, 7. Note that the approved $1.00 pay increase for new hires (from $10.25 to 11.25) was the same as Easton, Pennsylvania in 2007.

L. June 25, 2013: Wage Increase Talking Points.

On Tuesday, June 25, 2013, at 8:10 a.m., Acting Administrator Houck received an email categorized as "Importance: High," which contained suggested talking points about the Employer's plan to increase Nursing Assistants' pay rates. U. Exh. 10. The email was prepared by John Kolesar at 8:50 p.m. the night before and sent to Administrator Amanahu, Jermaine Hancock-Director of Human Resources, Patrice Bullock-Director of Nursing, Robert Fuhr-employee relations, labor relations, Tr. 146-47, Karen Boxen- Regional Human Resource Manager, Tr. 78, Kim Rocheleau-Director of Operations, Tr. 45-46, and James Burtnett-

"Employee Relations Consultant." Tr. 303. The Employer offered no explanation why Robert Fuhr and James Burtnett, who were responsible for the anti-union campaign, Tr. 147-48, 303, were included on the email. The suggested talking points are as follows:

> -Periodically the company conducts an analysis of wages for positions in the markets we serve. We do this to provide employees with fair and competitive pay rates.
>
> -A recent market analysis conducted indicates that the CNAs in Ruxton are due to have an adjustment to their wages to bring them to a competitive pay rate. Therefore we will be making adjustments to CNA pay rates.
>
> -These new rates will be effective June 19 (current pay cycle) and will be reflected on the July 10th paycheck.
>
> -Over the next few days, Jermaine and I will be meeting with each of you individually to discuss how this will affect you.
>
> -Thank you to all of you for your hard work and your commitment to providing quality care to our residents.

U. Exh. 10. Note that the email contains no attachments and that Houck and others were given no specifics about the amount of the wage increases.

Tammie Houck testified that she began talking to Nursing Assistants about the wage increases immediately after she received the email. U. Exh. 10, Tr. 113-114, 120. She testified that she spoke to approximately 25 of the Nursing Assistants on June 25, 2013, and that she spoke the rest sometime thereafter when "these letters came in." Tr. 234, 120-21.

M. June 26, 2013: 1199 SEIU Files Petition For Representation.

One day after Ms. Houck began announcing the anticipated wage increases, a group of ten Nursing Assistants approached Tammie Houck to ask for voluntary recognition. HO Report at 10, n. 21. Ms. Houck testified that the group gathered outside of the Ruxton facility where she was waiting for them. Tr. 91. She testified that she knew about their plan ahead of time, from an undisclosed source, and that she met them outside to avoid "any added drama." Tr. 88. When

asked if she communicated with anyone about her knowledge of the plan, she responded, "Not by e-mail, no." Tr. 235. On June 26, 2013, 1199 SEIU filed the petition for representation. Bd. Exh. 3.

N. July 7, 2013: The Employer Grants Wage Rate Increases and Bonuses.

On July 7, 2013, the Employer began meeting with Nursing Assistants one-by-one and presenting them with letters advising them of their new wage rates. U. Exh. 2, Tr. 23,-24, 107, 151. Depending on each Nursing Assistant's existing wage rate, they received an increase of between $0.13 and $2.27 per hour, U. Exh. 17 (or increases of between 1% and 14.5%). Er. Exh. 2, 5. 31% of eligible voters (19 out of 65) received a rate increase of $1.00 or more. Er. Exh. 2, 5. A small number of Nursing Assistants were deemed ineligible for the wage increase, because their wage rates were already above scale. They were given lump sum bonuses of between $234.00 and $331.50 instead. U. Exh. 16.

The Nursing Assistants met with Administrator Amanahu, Assistant Administrator Houck, or HR Director Hancock. Tr. 23,-24, 107, 121, 151. Ms. Houck testified that the reason for these one-on-one meetings was to "make sure the employees were informed before they saw their paycheck." Tr. 114. Among the Nursing Assistants who met with HR Director Hancock were those assigned to the third floor. Tr. 186. The Nursing Assistants were asked to sign prepared letters acknowledging their new wage rates or bonuses. U. Exh. 2. While many of the letters were never signed, three employees specifically refused to sign. Tr. 20-22, 151-152, U. Exh. 2.

O. July 30 and 31, 2013: In a Captive Audience Presentation, The Employer Compares Wage Rates at Manor Care-Ruxton to Wage Rates at Other Facilities Represented by 1199 SEIU.

On July 30 and 31, 2013, one week before the election, the Employer held captive audience meetings at which Administrator Amanahu made a power point presentation. U. Exh. 5, 6; Tr. 55-56. The presentation places significant emphasis on a comparison of the newly implemented starting wage and the starting wage of other HCR Manor Care facilities represented by 1199 SEIU, which did not receive "market" adjustments.

> Look at the 1199 SEIU track record with HCR-ManorCare and decide whether you want to trust your future to (sic) this Union…
>
> **ManorCare-Dulaney**
>
> -The starting rates negotiated by this Union for GNAs are lower than Ruxton. A GNA at Dulaney with no experience makes $10.00 per hour. At Ruxton, the rate is $11.25.
>
> -SEIU members at Dulaney have the same insurance and employee contributions as you have.
>
> And those things are not limited to Dulaney.
>
> Look at what this same Union has negotiated at Adelphi and Hyattsville.
>
> **Adlephi** (sic)
>
> -SEIU-negotiated GNA starting rate….$10.25 per hour.
>
> -SEIU-negotiated health coverage…the same as yours.
>
> **Hyattsville**
>
> -SEIU-negotiated GNA starting rate….$9.60 per hour.
>
> -SEIU-negotiated health coverage…the same as yours.
>
> You would earn $2,437.00 less with the Dulaney contract than you would at Ruxton.
>
> However, your losses may not end there…

Dulaney, Hyattsville and Adelphi all have this same Union.

Compare the direct care hours per patient day (HPPDs) at those three Union Buildings with staffing at Ruxton.

Ruxton	Dulaney	Adelphi	Hyattsville
3.6057	3.5573	3.4397	3.3866

BUT, the SEIU has *NEVER* gotten back into an HCR-ManorCare Center after the employees have gotten them out!

Clearly, the *overwhelming majority* of HCR-ManorCare employees who have had the SEIU as their representative, have learned they are much better off *without* this Union!

You have to decide whether you are willing to risk your future on…

…the UNKNOWN!

U. Exh. 5.

P. The Employer Offered No Proof That a Market Analysis Was Conducted, No Proof When A Market Analysis Was Conducted, and No Explanation Why It Decided to Adjust Wages in June 2013.

After October 24, 2012, the first document produced by the Employer which makes any reference to a market wage adjustment is the string of emails described above and dated June 14-17, 2013, which emails were initiated by John Kolesar, HCR Manor Care's Area Human Resources Director, to Suse Learman, Manager, Compensation EEO/AA Compliance.

Kolesar claimed that Request for MAWA for Ruxton was generated in May 2013. Tr. 243. The Employer offered no documentary support for this claim, which was not corroborated by any other witness. Kolesar's testimony was not credited by the Hearing Officer, who found that Kolesar emailed a finalized wage proposal to Suse Learman on June 14, 2013. HO Report at

7.[4] The Hearing Officer noted that a draft Request for MAWA was sent by Karen Boxen, Regional Human Resource Manager, to Jermaine Hancock, Director of Human Resources-Ruxton, four days later on June 18, 2013. HO Report at 8.

The Request for MAWA worksheet returned by Hancock one day later includes a space for "Information obtained on the local market wages for the position." Er. Exh. 1. This section was not completed by Ms. Boxen or Mr. Hancock. Id. Mr. Hancock testified that he had no role in gathering or providing data concerning the wage rates paid to Nursing Assistants in the Baltimore area for the purpose of conducting a market analysis. Tr. 145. Administrator Amanahu similarly denied any participation in the market analysis, Tr. 37, as did John Kolesar, Tr. 292-93. Each testified that such responsibility belongs to corporate compensation or MCHS. Tr. 37, 271-272, 293. Mr. Kolesar testified it would not be appropriate for anyone else to investigate market wage rates. Tr. 293. Likewise, HCR Manor Care's Policy and Procedures regarding compensation practices states, "All wage survey information will be provided by the compensation department and should not be obtained by the location." U. Exh. 12.

No one from HCR Manor Care's Corporate Compensation department testified at the hearing and the Employer offered no documents concerning the method and timing of any alleged market wage analysis it conducted. The single piece of evidence offered by the Employer to prove that it conducted a market analysis before it granted wage increases was the spreadsheet attached to Kolesar's email reporting the "market average" for Nursing Assistants as $13.19 per hour. Er. Exh. 2.[5]

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[4] Kolesar also claimed incredibly that he was not aware of organizing activity at Ruxton until June 2013. Tr. 298-299. He subsequently acknowledged that he was aware that Union Exhibit 1, the first anti-union letter dated May 15, 2013, was distributed to employees. Tr. 301.

[5] The spreadsheet, which the Union objected to, is dated November 12, 2013.

There is no evidence in the record of any Request for MAWAs or emails discussing wage adjustment requests or proposals for any other facilities in the Baltimore area other than Ruxton and Roland Park, which were the two facilities targeted by 1199 SEIU. Tr. 211.

Q. The Election.

The election was held on August 7, 2013. 61 out of 65 eligible voters voted in the election, 28 in favor and 33 against. If 3 people had voted differently, a majority would have elected the Union as their bargaining representative.

ARGUMENT

THE HEARING OFFICER ERRED IN FINDING THAT THE EMPLOYER'S ANNOUNCEMENT OF WAGE INCREASES AND BONUSES OCCURRED OUTSIDE THE CRITICAL PERIOD.

In overruling Objection 2, the Hearing Officer found that the Employer's announcement of unspecified wage increases was not objectionable because it occurred one day before the petition was filed. It is true that Acting Administrator Tammie Houck testified that she began telling Nursing Assistants about an unspecified market wage adjustment on June 25, 2013, and that the petition for representation was filed on June 26, 2013. Ms. Houck testified that the announcement was made to 25 out of 65 Nursing Assistants, which estimate she made based on the number of day-shift employees scheduled that day. Tr. 120-21, 234. It is also true, however, that Ms. Houck admitted that she informed the remaining Nursing Assistants some time in the future, "what [sic] these letters came in." Tr. 120-21. Such testimony establishes that a significant number of Nursing Assistants were informed about the wage increase after the petition was filed. Ms. Houck's mention of "these letters" was a reference to the individualized letters that were hand delivered to Nursing Assistants on or after July 7, 2013, and that were

introduced at the hearing as Union Exhibit 2. The Hearing Officer erred in reaching the conclusion that "The Union presented no evidence that employees were informed about the MAWA after June 25." HO Report at 10.

More importantly, where the question is whether the alleged conduct had a "tendency to interfere with employees' freedom of choice," the inquiry should focus not just on the timing, but on the content of the employer's announcement. *See Cambridge Tool & Mfg. Co.*,316 NLRB 716 (1995). The primary "talking points" conveyed to the Nursing Assistants before the critical period were that the Employer had done a market analysis and that a forthcoming wage increase would be retroactive to June 19, 2013. It is no coincidence that these are the salient facts relied on by the Employer to defend its wage increase. From the Nursing Assistants' perspective this information is not as meaningful as the amount of the wage increase or bonus, which was not communicated until July 7, 2013. (Nursing Assistants who were deemed ineligible for the "market" adjustment were informed, *during* the critical period, that they would receive a bonus of between $234.00 and $331.50. U. Exh. 16.) 31% (19 out of 65) of eligible voters were informed that they would receive a wage increase of $1.00 per hour or more *during* the critical period.

Objectively speaking, it cannot be said that *this* information did not have a tendency to interfere with employees' free choice in the election. Moreover, the manner in which the wage increases and bonuses was conveyed—with a letter hand delivered by the same Employer representatives who distributed the Employer's campaign literature—establishes the Employer's expectation that *this* announcement would persuade Nursing Assistants to reject third-party representation. The Nursing Assistants were reminded of the Employer's beneficence, and the futility of unionization, one week before the election, when the Employer made a PowerPoint

presentation comparing the newly established minimum wage rates with the minimum rate at nearby 1199 SEIU facilities, which facilities received no "market" adjustment.

Based on these facts, 1199 SEIU respectfully requests that Hearing Officer's recommendation be overruled and that Union Objection 2 be sustained.

THE HEARING OFFICER ERRED IN FINDING THAT THE EMPLOYER'S AWARD OF WAGE INCREASES AND BONUSES OCCURRED OUTSIDE THE CRITICAL PERIOD.

In overruling Objection 3, the Hearing Officer found that the Employer's *award* of a wage increase during the critical period was not objectionable because the "effective" date of the increase was made retroactive to a date before the petition was filed. In so concluding, the Hearing Officer relied on *Kokomo*, 280 NLRB at 357. In that case, the Board decided that the date of payment or implementation was not determinative because the announced wage increase was "effective" before the critical period. Such reliance is misplaced, however, because in *Kokomo* the Employer had not made the "effective" date retroactive, as the Employer did here. *Id.*

In this case, the evidence shows that Employer decided to make the wage increases retroactive because it knew a petition for representation was imminent. In letters to employees, the Employer disclosed that it knew when the union was visiting employees at their homes, U. Exh. 1 (May 15, 2013, letter) and when employees were signing cards. U. Exh. 8 (June 19, 2013, letter.) The Employer knew that employees were preparing to demand recognition and when. Tr. 88-89.[6] Such evidence and the Employer's hand delivery of campaign leaflets in one-on-one meetings, Tr. 15, 82-84, provides ample support for an inference that the Employer kept careful tabs on the progress of the organizing drive. Its concern that a petition was

[6] The Hearing Officer erred in sustaining his own objection to the Union's questions concerning the source of the Employer's knowledge of employees' plan to demand recognition. Tr. 89.

forthcoming clearly accounts for John Kolesar's email to Corporate Compensation proposing "market" wage adjustments on June 14, 2013, with a request that the proposal be "expedited." He waited just one week before inquiring about the status of the proposal. Kolesar's emails contain no recommendation of "effective" date for the proposed wage increase. Nonetheless, he promptly received approval on June 24, 2013 (two days before the petition was filed), in an email documenting an effective date of June 19, 2013. At 8:50 p.m that evening, Kolesar sent an email, subject line "Importance: High," with suggested talking points concerning the approved wage increases. U. Exh. 10. The email was sent to Ruxton facility personnel responsible for disseminating the Employer's anti-union message and copied to the two corporate executives responsible for the campaign, including Robert Fuhr, employee relations, labor relations Tr. 146-47, and James Burtnett, "Employee Relations Consultant." Tr. 303.

All of the above facts support a conclusion that the Employer's motive in making the wage increases retroactive was to evade the *Ideal Electric* rule—establishing the filing of the petition as the cutoff between non-objectionable and objectionable conduct. 134 NLRB at 1278.[7] By applying *Kokomo* in this case, the Hearing Officer has eviscerated the *Ideal Electric* rule. He has created a loophole permitting an employer to award wage increases after a petition has been filed, so long as employer makes the wage increase retroactive. Worse still, the loophole permits an employer to distribute pre-election lump sum payments to employees, so long as the employer labels such payments "retroactive pay," as the Employer did here.

The Employer here also paid lump sums to voters who were deemed ineligible for a wage increase, labeling those payments "bonuses." The bonuses were unconnected to any alleged

[7] The Employer's subsequent conferral of a "market" adjustment to other non-union facilities, to extent believed, fails to detract from a conclusion that the Employer's motive was improper. Rather, it bolsters the argument that HCR Manor Care took affirmative steps to prepare for litigation while lawfully creating disincentives to unionization.

analysis of competitive wage rates and were not insignificant. Even under *Kokomo*, the "effective" date rationale applied by the Hearing Officer does not excuse the Employer's payment of bonuses to 12 eligible voters *during* the critical period.

Because this case exemplifies employer exploitation of the *Ideal Electric* rule as it intersects with *Exchange Parts*, 375 U.S. 405, 409 (1964), at the expense of employees' freedom of choice and Board resources, 1199 SEIU respectfully requests that the Board explicitly overrule *Kokomo* and expand upon its reasons for setting the election aside in *Kingspan,* 359 NLRB slip op. at 1 fn. 2 (the implementation of a shift differential during the critical period was objectionable). *See also Wis-Pak Foods Inc.*, 319 NLRB at 933, 1 fn. 2 (the implementation of a change in overtime policy during the critical period was objectionable). In *Kingspan,* the ALJ reasoned that pre-petition conduct may be considered "if it adds meaning and dimension to related post-petition conduct." *Kingspan,* 359 NLRB slip op. at 6 (ALJ Decision). Although the Board affirmed the ALJ's findings and conclusions, there is an apparent need for the Board to speak further on this issue.

The undisputed evidence in this case establishes that the Employer's pre-petition decision to award wage increases was made with the objective of interfering with employees' freedom of choice. *Manor Care Health Servs.-Easton*, 356 NLRB slip op. at 21 (the Board will presume improper motive and interference with employee rights under the Act, "[a]bsent a showing of a legitimate business reason for the timing of a grant of benefits during an organizing campaign."). *See also Sarah Neuman Nursing Home*, 270 NLRB 663, 663, 678 (1984) (improper motive found where preparation of wage surveys in the past had not automatically resulted in wage increases). The Hearing Officer found that the Employer failed to establish a legitimate business reason for the fact or timing of its June 14, 2013 wage proposal. HO Report at 14. No other

facts are required to add meaning and dimension to the Employer's post-petition payment of wage increases, retroactive pay and bonuses to eligible voters.

In declining to consider the Employer's illegitimate objective and its pre-petition conduct in furtherance of that objective, the Hearing Officer found that the Employer had established a history of "using a Request for MAWA as a compensation tool." HO Report at 12. In fact, the record supports no such history. The only history supported by the record is a history of HCR Manor Care's documentation of its alleged concern with competitive wage rates. There is no evidence or testimony establishing an actual practice of comparing wage rates or making market adjustments at the Ruxton facility. The Hearing Officer's finding is also irrelevant given his additional finding that the Employer did not follow any of its alleged policies, procedures or handbooks when it decided to award wage increases at the Ruxton facility.

Indeed, the record fails to establish a history of market adjustments made at any HCR Manor Care facility, except to the extent necessary to defeat an active union organizing campaign. *See, e.g.*, *Manor Care Health Servs.-Easton,* 356 NLRB slip op. at 21. The evidence presented here, in *Manor Care Health Services-Easton,* and in *Heartland Health Care Center-Hampton*, establishes only one consistent practice and policy of HCR Manor Care—to identify and respond to union activity in the labor market by application of the procedures set forth in "the CEC."

The CEC manual provides for specific preemptive responses to any "special risks due to market or internal vulnerabilities," including "union activity at other businesses in the area or HCR Manor Care locations" and "local community action/religious groups rallying employees to unionize." U. Exh. 14 at 1, 13. Among the recommended responses are small group meetings

and vulnerability assessments. It can reasonably be inferred from this record that one other response is the preparation of Requests for MAWA.

Given HCR Manor Care's historical and present commitment to union awareness, the Hearing Officer erred by not inferring that the Employer was aware of 1199 SEIU's citywide campaign to raise working standards for health care workers in October 2012. Such commitment, the timing of the October 2012 Request for MAWA, the fact that it was created at the request of HCR Manor Care's Regional Director of Human Resources, the absence of an explanation for the timing of such request, and the Employer's failure to act on the October 2012 MAWA support an inference that the Employer created the October 2012 Request for MAWA in anticipation of a possible organizing drive and litigation. Whatever comparisons the Employer now attempts to draw between the October 2012 MAWA and the June 2013 MAWA, there is nothing in the record establishing that a market wage adjustment was "in the works" until the Employer had reason to believe that a majority of employees were interested in union representation.[8] That the Employer's objective was to avoid unionization with wage increases, retroactive pay and bonuses is clear from its PowerPoint presentation one week before the election, comparing the newly awarded minimum wage rates with minimum rates at nearby 1199 SEIU facilities, which received no "market" adjustment.

The Hearing Officer failed to consider all of this pre-petition evidence and conduct in reaching his decision to rely on the "effective" date of the wage increase and to disregard the impact of such increases on employees' freedom of choice in the election.

1199 SEIU respectfully requests that Objection 3 be sustained.

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[8] John Kolesar, who testified that he and other corporate executives generated the June 14, 2013 wage proposal, also testified that he never received and had no involvement with the October 2012 Request for MAWA. Tr. 259, 290-92.

THE HEARING OFFICER ERRED IN FINDING THAT THE EMPLOYER'S COMPARISON OF WAGE RATES AT NEARBY 1199 SEIU FACILITIES AND ITS STATEMENTS THAT EMPLOYEES COULD EARN LESS IF THEY SELECTED THE UNION WERE FACTUAL AND NOT OBJECTIONABLE.

The test for evaluating pre-election conduct is an objective one—whether it has "the tendency to interfere with the employees' freedom of choice." *Cambridge Tool & Mfg. Co.,* 316 NLRB 716 (1995). This means that the party seeking to set aside an election is not required to present an employee witness to testify that their freedom of choice was diminished or their vote was changed because of alleged pre-election misconduct.

In determining whether to set an election aside, the Board considers a number of factors, including (1) the number of incidents of misconduct; (2) the severity of incidents and whether they were likely to cause fear among unit employees; (3) the number of employees in the unit subject to the misconduct; (4) the proximity of the misconduct to the election; (5) the degree of persistence of the misconduct in the minds of unit employees; (6) the extent of dissemination of the misconduct; (7) the closeness of the vote; and 8) the degree to which the misconduct can be attributed to the party. *Kingspan*, 359 NLRB slip op. at 6 (citing *Cedar-Sinai Med. Ctr.*, 342 NLRB 596, 597 (2004)).

The Hearing Officer did not consider any of these factors in overruling Objections 4 and 5. He found, simply, that the Employer did not threaten Nursing Assistants with the loss of their new wage rates (Objection 4), and did not imply that unionization would be futile (Objection 5), because the Employer's statements were truthful. Such finding rested in part on his erroneous conclusion that the Employer's award of wage increases and bonuses was not technically objectionable. Even if not, the Hearing Officer should have considered his own conclusion that the Employer's announcement and award of wage increases was motivated by an illegitimate objective—to interfere with employees' freedom of choice—which objective is also unlawful.

See Kingspan, 359 NLRB slip op. at 6.

The Hearing Officer also should have considered that the vote in this case was close and most of the Nursing Assistants received a wage increases and retroactive pay or a bonus just weeks before they saw the Employer's PowerPoint presentation. The presentation placed significant emphasis on the wage differential between Ruxton's minimum of $11.25 per hour and the $9.60, $10.00 and $10.25 minimum wage rates paid by HCR Manor Care at nearby 1199 SEIU facilities, which facilities (according to the Employer) offer the same benefits. While such comparison may have been factually accurate, the timing of it, in the wake of the Employer's well-timed wage increases, places emphasis on the fact that the Employer controls wage rates, not the market, not 1199 SEIU. The Employer emphasized this message throughout its campaign: "**There is nothing you can do to make this Union keep the promises they have made."** U. Ex. 1 (emphasis in original).

Clearly, the Employer expected its Nursing Assistants to draw the conclusion that there was nothing they could hope to gain from unionization and that unionization would place their newly awarded wage increases at risk. Hence, its closing argument, "You have to decide whether you are willing to risk your future on……the UNKNOWN! U. Exh. 5 (emphasis in original.) *See Smithfield Foods Inc.*, 349 NLRB 1226, 1229-30 (2006) (statement that union cannot get employees "anything" that the employer is not willing to give, that union could not win a strike and that "this plant will continue to get pay and benefits similar to the other plants, not more, not less" were statements of futility); *Taylor-Dunn Mfg Co.*, 252 NLRB 799, 800 (1980) (in responding to questions employer's statement that union will have to bargain for everything implied that futility and that employees will lose benefits); *G & K Servs., Inc.*, 357 NLRB No. 109, slip op. at 2 (2011) (linking the decertification of a union at another facility to

employees' receipt of spousal healthcare benefits there).

It *is* settled that an employer may lawfully compare actual wage rates amongst union and non-union facilities. *G & K Servs., Inc.*, 357 NLRB slip op. at 2-4. However, the inquiry does not end there. The Board has stated that the circumstances of such comparisons and accompanying statements, including the precise contents and context of such statements, may render such comparisons unlawful. *Id.* Thus, in *G & K Services*, the Board found that wage comparisons accompanied by statements linking enhanced benefits to a decertification vote would reasonably be interpreted by employees as a promise that they too would receive such benefit if they voted to decertify the union. *Id. See also Enterprise Leasing Co. of Fla.,* 359 NLRB No. 149, slip. op. at 2 (2013) (employer's statement that it was eliminating short-term disability benefits "because of their union contract" was not truthful, because nothing in the agreement mandated that the employer eliminate the benefit.)

Here, the Employer's PowerPoint presentation was nothing more than a celebration of its unlawful interference with employeees' freedom of choice and a portrayal of unionization as futile. In it the Employer asked its Nursing Assistants to consider the "1199 SEIU track record with HCR Manor Care" before deciding whether to trust SEIU. It then presented the fact that unionized employees at Dulaney, Adelphi, and Hyattsville are paid less and receive the same benefits as 1199 SEIU members. By touting its "track record" in negotiating low wages, the Employer impliedly threatened a loss of wages—making unionization futile—if employees voted against unionization. These messages were reinforced by six consecutive slides showing how the Employer has kept wages below "market" at other facilities and instilling fear in the Nursing Assistant with statements such as, "[y]ou would earn less" and "your losses may not end there...."

The Employer completed its message of futility by emphasizing that six Manor Care Health Services facilities have decertified the union. The powerlessness of the Union is highlighted by the Employer's statement that once decertified, the "SEIU has *NEVER* gotten back."

Under all the circumstances of this case, including the coercive one-on-one meetings in which the Employer required Nursing Assistants to sign in acceptance of their new wage rate, an objective employee would reasonably interpret the Employer's message as a threat/promise that if they voted for unionization the Employer would ensure that they too would be paid sub-market wage rates. In light of the Employer's recent decision to raise non-unionized employees' wage rates only, such threat is grounds for setting aside the results in this close election.

CONCLUSION

For the forgoing reasons, 1199 SEIU requests that the Board overrule the Hearing Officer's Report and Recommendation and set the election results aside.

Dated: February 20, 2014

Respectfully submitted,

GLADSTEIN, REIF & MEGINNISS

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of	)	
	)	Case 05-RC-108090
HCR MANORCARE, RUXTON	)	
	)	
Employer	)	
	)	
and	)	
	)	
1199 SEIU UNITED HEALTH CARE WORKERS EAST	)	
	)	
Petitioner	)	
	)	

Certificate of Service

Petitioners' Brief in Support of Exceptions is being electronically filed today (February 20, 2014) with the Executive Secretary of the National Labor Relations Board. Copies of this submission have been served today via email on counsel for all other parties, as follows:

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February 20, 2014